

R. K. O'CONNELL TEXAS AMERICAL OIL CORP., ET AL.

IBLA 83-592

Decided October 25, 1983

Appeal from decision of Wyoming State Office, Bureau of Land Management denying petition for reinstatement of oil and gas lease W-57045 and declaring the lease terminated by operation of law.

Affirmed.

1. Oil and Gas Leases: Reinstatement--Oil and Gas Leases:
Rentals--Oil and Gas Leases: Termination

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1976). Under 30 U.S.C. § 188(c) (1976), the Department of the Interior has no authority to reinstate a terminated oil and gas lease when the rental payment is not tendered at the proper office within 20 days after the due date.

2. Oil and Gas Leases: Reinstatement--Oil and Gas Leases:
Termination

Sec. 401 of the Federal Oil and Gas Royalty Management Act of 1982, P.L. 97-451, 96 Stat. 2447, amending sec. 31 of the Mineral Leasing Act of 1920, 30 U.S.C. § 188 (1976), affords an additional opportunity to reinstate a lease terminated by operation of law where the rental was not tendered within 20 days of termination if certain additional conditions are met. For a lease which terminated prior to enactment of sec. 401 the lessee must have tendered the rental to BLM prior to the date of enactment to qualify the lease for reinstatement.

APPEARANCES: R. K. O'Connell, for appellants.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

This appeal is taken for a decision, by the Wyoming State Office, Bureau of Land Management (BLM), dated April 14, 1983, denying appellants' petition for reinstatement of oil and gas lease W-57045, and declaring the lease terminated by operation of law effective December 31, 1982. 1/

Appellants' 2/ rental payment was received by BLM on February 10, 1982. On February 17, 1983, BLM sent appellants a termination notice and advised them of their right to petition for reinstatement. Appellants filed a petition, asserting that late payment was due to computer error.

In its decision denying the petition, BLM cited 43 CFR 3108.2-1(c) which provides that a lease may be reinstated if the rental has been paid or tendered within 20 days of the due date. BLM also referred to the Federal Oil and Gas Royalty Management Act (Act) P.L. 97-451 (enacted Jan. 12, 1983), which provides for the reinstatement of leases where it is shown to the satisfaction of the Secretary that failure to pay the rental timely was inadvertant, provided certain criteria are met. Section 401 of the Act amends section 31 of the Mineral Leasing Act of 1920, 30 U.S.C. §188 (1976), by adding a new subsection which provides as follows:

(2) No lease shall be reinstated under paragraph (1) of this subsection unless--

(A) with respect to any lease that terminated under subsection (b) of this section prior to enactment of the Federal Oil and Gas Royalty Management Act of 1982:

(i) the lessee tendered rental prior to enactment of such Act and the final determination that the lease terminated was made by the Secretary or a court less than three years before enactment of such Act, and

(ii) a petition for reinstatement together with the required back rental and royalty accruing from the date of termination, is filed with the Secretary on or before the one hundred and twentieth day after enactment of such Act, or

(B) with respect to any lease that terminated under subsection (b) of this section on or after enactment of the Federal Oil and Gas Royalty Management Act of 1982, a petition for reinstatement together with the required back rental and royalty accruing from the date of termination is filed on or before the earlier of--

1/ This statement was in error. A lease terminates as of close of business on the anniversary date of the lease. See Getty Oil Co., 72 IBLA 39, 41 (1983). The instant lease terminated on Jan. 1, 1983.

2/ The parties in interest served with a copy of BLM's decision are R. K. O'Connell, Texas American Oil Corporation, Columbine Exploration Corporation, John J. Pedry, Bob Nichols,

Robert A. Unger, and George W. Hoffer. In the statement of reasons, R. K. O'Connell states that the appeal was being filed on behalf of himself, Texas American Oil Corporation, Columbine Exploration Corporation, and John J. Pedry.

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(i) sixty days after the lessee receives from the Secretary notice of termination, whether by return of check or by any other form for actual notice, or

(ii) fifteen months after termination of the lease.

BLM found that since appellants' lease terminated prior to the enactment of P.L. 97-451 and rental was tendered after the date of enactment, reinstatement did not fall within the purview of the statute.

On appeal to this Board appellants again point out that late payment was due to a computer error. They state their argument as follows:

It is our contention that since the lease was terminated only eight days [3/] before enactment of P.L. 97-451, and the Oil and Gas Termination Notice was received on 22 February 1983, over five weeks after the enactment, our Petition for Reinstatement should fall under Section 401, (d)(2)(B), rather than under 401, (d)(2)(A).

Petition for Reinstatement was filed by Texas American Oil Corporation on 24 February 1983, two days after the Oil and Gas Termination Notice was received, and late payment of rental was received by the State Office on 10 February 1983. Therefore the requirements of P.L. 97-451, Section 401, (d)(2)(B) are satisfied.

[1] Section 31 of the Mineral Leasing Act, as amended, 30 U.S.C. § 188(b) (1976), provides that upon failure of a lessee to pay rental for a lease on which there is no well capable of production of oil or gas in paying quantities on or before the lease anniversary date, the lease terminates automatically by operation of law. This Department has no authority under the reinstatement provision of 30 U.S.C. § 188(c) (1976) to reinstate an oil and gas lease that has terminated by operation of law, unless payment of the required amount is received within 20 days after the date of termination.

The regulation applicable at the time 4/ was 43 CFR 3108.2-1(c). This regulation provided:

3/ As the decision points out, Jan. 1, 1983, was a Saturday. Therefore, appellants' payment would have been timely had it been received by the BLM office on the following Monday, Jan. 3, 1983. This, however, does not alter the fact that payment was due on Jan. 1, 1983, and when it was not timely paid the effective date of the lease termination was Jan. 1, not Jan. 3.

4/ Effective Aug. 22, 1983, the Federal oil and gas leasing regulations were revised. 48 FR 33648-82 (July 22, 1983). Subpart (iii) of the above regulations now reads:

"(iii) A petition for reinstatement, together with a nonrefundable filing fee of \$25 and the required rental, including any back rental which has accrued from the date of the termination of the lease, is filed with the proper BLM office within 15 days after receipt of Notice of Termination of Lease due to late payment of rental. The Notice of Termination shall be sent only if the rental is actually paid."

(c) Reinstatement. (1) Except as hereinafter provided, the authorized officer may reinstate a terminated lease which has been or is hereafter terminated automatically by operation of law for failure to pay on or before the anniversary date the full amount of rental due, provided that (i) such rental was paid or tendered within 20 days thereafter, and (ii) it is shown to the satisfaction of the authorized officer that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee, and (iii) a petition for reinstatement, together with the required rental, including any back rental which has accrued from the date of termination of the lease, is filed with the appropriate office within 15 days after receipt of Notice of Termination of Lease due to late payment of rental. The Notice of Termination will be sent by certified mail, return receipt requested.

[2] Appellants' argument that they met the conditions for reinstatement under section 401 of the Act is erroneous. The fact that a petition for reinstatement may have been filed within 15 days of receipt of a termination notice from BLM cannot create a right where reinstatement is precluded by other circumstances or otherwise not authorized by law. Section 401 sets out two categories of reinstatement: those in which the lease terminated prior to enactment of the statute and those in which it terminated on or after enactment. Since the lease terminated effective January 1, 1983, it is clearly in the former category. To qualify for reinstatement the lessee must have 'tendered rental prior to the enactment of such Act.' The record shows that such tender 5/ occurred subsequent to enactment. BLM properly denied appellants' petition for reinstatement.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Wyoming State Office is affirmed.

R. W. Mullen
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Ann Poindexter Lewis
Administrative Judge

5/ A "tender" is made when a lessee submits payment to the proper BLM office and BLM has the opportunity to either receive or decline payment. Mobil Oil Corp., 35 IBLA 265 (1978).

